

REMARKS

This Amendment and Response to Non-Final Office Action is being submitted in response to the non-final Office Action mailed July 14, 2005. Claims 21-27 are pending in the Application. Claims 21-27 stand rejected. Specifically, Claims 21-27 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Stark '818 (U.S. Pat. No. 3,669,818) in view of Parker et al. '459 (U.S. Pat. No. 1,925,459), and in further view of Sherrill et al. (U.S. Pat. No. 3,721,273).

In response to these rejections, Claims 21 and 29 have been amended to further clarify the subject matter of the present invention. These amendments are fully supported in the specification, drawings, and claims of the Application and no new matter has been added. Based upon the amendments, reconsideration of the Application is respectfully requested in light of the following remarks.

***Rejection of Claims 21-36 Under 35 U.S.C. 103(a) –
Stark '818 in view of Parker et al. '459 and Sherrill et al. '273***

Claims 21-27 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Stark '818 (U.S. Pat. No. 3,669,818) in view of Parker et al. '459 (U.S. Pat. No. 1,925,459) and in further view of Sherrill et al. (U.S. Pat. No. 3,721,273).

Specifically, the Examiner states that:

[I]t would have been obvious to one of ordinary skill in the art to create towels with a known design structure, as shown in Sherrill et al., by combining woven patterns with printed patterns as taught in Stark and Parker et al., which teaches creating towels with different colored sections combined with printed patterns to produce a desired finished product.¹

Examiner admits that Stark '818 and Parker et al. '459 do not teach the specific features of a towel having borders at each edge and a central area where the printing is

¹ Office Action, Page 8, paragraph 3.

applied.² Examiner instead takes the position that the claimed border has no mechanical function, and instead relates only to ornamentation. Examiner recites the familiar tenet that matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. What the Examiner has failed to recognize, and continues to fail to recognize, is the mechanical function of the claimed woven structure. Because of this mechanical structure, the precedent of *In re Seid*³ which the examiner relies upon is inapplicable.

The Examiner further cites *In re Gulack* for the proposition that there must be a new and unobvious functional relationship between the printed material and the substrate.⁴ This is exactly the point that the Applicant has been making throughout prosecution. Arguments were presented via Responses to Office Actions, in the Appeal Brief, orally before the Appeal board, and in the second Appeal Brief. The Examiner continues to ignore page 8 of the specification. Because the Examiner continues to ignore this, the independent claims have now been amended via a "wherein" clause, setting forth the functional language of pages 9-10. This application, and the invention claimed herein, is the corollary of *In re Gulack* where there is a functional relationship between the printed material (here, the graphic impression) and the substrate (here, the towel). Here, there does exist such a new and unobvious relationship.

By utilizing the color scheme in claim 21, other mechanical objects of the invention can be achieved beyond simply an aesthetically pleasing towel. This article employs jacquard weaving to create an article with a central light colored area, surrounded by a dark border. Due to the jacquard process, the reverse side of the article is a dark colored central area surrounded by a light colored border. A design can be printed in the light colored central area of the first side. The dark colored border

² See Office Action, page 6, paragraph 1.

³ 161 F.2d 229, 73 USPQ 431 (CCPA 1947).

⁴ 703 F.2d 1381, 1385-86, 217 USPQ 401, 404 (Fed. Cir. 1983). There, the application dealt with a series of numbers on a band. The Examiner had cited art that differed from the Application only in the sequence of the numbers. Thus, the court held that patentable weight is not given to the content of the printed matter itself, which is nonstatutory, where the sole difference is in the content of the printed material, and there is no functional relationship between the printed material and the substrate.

surrounding the light central area is capable of masking any pattern that might overlap onto the border from the central area. See Figure 3 where this is illustrated and clearly described in the specification. This eliminates the need for precise alignment and monitoring that is mandatory in the prior art. Likewise, the dark central area on the reverse side of the article is capable of masking any potential bleed through of the design on the light colored central area of side one. This allows the applicant to apply the image so as to result in a graphic that is more intensely colored than woven articles that are limited to a single front and rear color. This structure is present in amended Claims 21 and 29, which now incorporate the features of Claims 23, and 31 respectively. It is described on page 9-10 of the specification.

When evaluating the scope of a claim, every limitation in the claim must be considered. See, e.g., *In re Ochiai*, 71 F.3d 1565, 1572, 37 USPQ2d 1127, 1133 (Fed. Cir. 1995). However, the claimed invention may not be dissected into discrete elements to be analyzed in isolation, but must be considered as a whole. See, e.g., *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1548, 220 USPQ 303, 309 (Fed. Cir. 1983); *Jones v. Hardy*, 727 F.2d 1524, 1530, 220 USPQ 1021, 1026 (Fed. Cir. 1983). Analyzing the discrete elements in isolation is exactly what the Examiner is doing in this case.

The Applicant has stated in the Application as filed that it is “well known to those skilled in the art that textile terry cloth items can be printed thereon....”⁵ This is the very proposition for which the Examiner cites Stark ‘818. This is known, and the Applicant has admitted as much.

Furthermore, the Applicant has stated in the Application as filed that the Jacquard or Dobby weaving process produces articles where “the color on one side alternates with the color on the other side of the textile.”⁶ This is the very proposition for which the Examiner takes the time to cite Parker et al. ‘459. This is known, and the applicant has admitted as much.

⁵ See Application as filed page 2, paragraph 2.

⁶ See Application as filed, page 2, paragraph 3.

With regards to Sherrill et al. '273, the Examiner states that:

In the event that the specific design and printed image are given patentable weight Sherrill et al. is included in the rejection as evidence that the design claimed by applicant, a border region surrounding a center area with a design graphic, is known to those in the art.

...Therefore, it would have been obvious to one of ordinary skill in the art to create towels with a known design structure, as shown in Sherrill et al., by combining woven patterns with printed patterns... to produce a desired finished product.⁷

While Sherrill et al. appears at first glance to have a border region as claimed by the Applicant, such is not the case. The Sherrill et al. towel is specifically manufactured so that the rayon terry piles are entirely on one side of the towel and the cotton terry piles are entirely on the other side.⁸ Sherrill et al. teach printing on the rayon fibers only, since they have an increased absorption for certain dyes, as is well known in the art. Therefore, both the border and the central area of Sherrill are defined by a printed pattern and would therefore appear only on one side, the rayon side, of the towel. A printed border belies the Applicant's invention, which requires a dark woven border for proper masking of misaligned and intense graphic printing.⁹ Likewise, the printed central portion of Sherrill et al. also misrepresents the Applicant's invention, which requires a dark woven central area on the reverse side of the towel for proper masking of bleed through and intense graphic printing from the light woven central area of the first side.¹⁰

Respectfully, if these are the best references that the Examiner can come up with, then the Examiner is continuing to waste the PTO's and the Applicant's time and resources. The cited references simply do not disclose anything beyond what the Applicant has stated as being prior art in the Application as filed.

⁷ See Office Action, page 8, paragraphs 2-3.

⁸ U.S. Pat. No. 3,721,273, col. 2, lines 52-59.

⁹ See Application as filed, Page 8, paragraph 2, and page 9, final paragraph.

¹⁰ See Application as filed, Page 8, paragraph 2, and page 9, final paragraph.

What is surprising and unobvious, is that the specifically claimed woven structure as defined in claims 21 is able to mask misalignments and bleed through that can occur in textiles of the prior art. This can only be achieved by utilizing the specific woven structure of the textile as claimed.

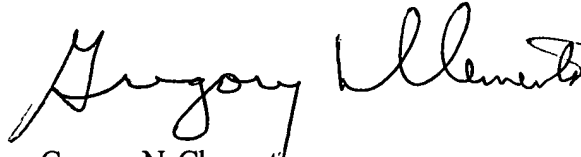
From the outset of this case, the Examiner has been oversimplifying the invention, and considering the discreet elements individually, and not as a whole. This is not the proper way to determine unobviousness. When considered as a whole, the claimed textile structure has mechanical function and is not merely ornamental. Furthermore, when considered as a whole, the claimed textile structure is unobvious over the prior art, and should be allowed.

For the above reasons, Applicant submits that the rejection of Claims 21-27 under 35 U.S.C. 103(a) is improper, and has been overcome. Applicant respectfully requests that the rejection be withdrawn.

CONCLUSION

Applicant believes that in light of the amendments to Claims 21 and 29, the application is now in a condition of allowance, and such favorable action is requested. Should Examiner determine that any further action is necessary to place the Application in better form for allowance, Examiner is encouraged to contact undersigned Counsel at the telephone number, facsimile number, address, or email address provided below. It is not believed that any fees for additional claims, extensions of time, or the like are required beyond those that may otherwise be indicated in the documents accompanying this paper. However, if such additional fees are required, Examiner is encouraged to notify undersigned Counsel at Examiner's earliest convenience.

Respectfully submitted,



Gregory N. Clements
Attorney for Applicant(s)
Registration No. 30,713
DOUGHERTY, CLEMENTS, HOFER & BERNARD
1901 Roxborough Road, Suite 300
Charlotte, North Carolina 28211
Telephone: 704/366-6642
Facsimile: 704/366-9744

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